

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HYPH (USA), INC. and XHAIL,  
INC.,

Plaintiffs,

v.

MICHAEL J. KIELY,

Defendant.

Civil Action No. 22-579-CFC

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**MEMORANDUM ORDER**

Pending before me is a Motion for Summary Judgment filed by Plaintiffs HYPH (USA), Inc. and Xhail, Inc. D.I. 80. In their concise statement of material undisputed facts filed in support of their motion, Plaintiffs state that “[u]nder the First Loan Agreement, Kiely promised to ‘repay the Loan in 57 bi-weekly instalments [sic] . . . [with] the final such instalment [sic] payment to be paid on’ September 8, 2023.” D.I. 82 ¶ 3 (alterations in the original). Defendant disputes this asserted fact in part and states that “[r]epayment of the First Loan Agreement was conditioned upon [Kiely] being an employee, wherein repayment installments were deducted from [Kiely’s] payroll.” D.I. 87 ¶ 3. Defendant cites record evidence that appears on its face to support his statement that Kiely’s alleged repayment obligation under the First Loan Agreement was conditioned on Kiely’s

employment at Xhail. *See* D.I. 87 ¶ 16; D.I. 31 ¶ 29; Def.'s Ex. 32 at 35:18–24; Def.'s Ex. 35 at 106:24–108:24, 137:6–10, 138:17–139:16.

Because there is a disputed fact that Plaintiffs have said is material to their motion for summary judgment, I will deny the motion. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that summary judgment will not lie if there is a genuine dispute about a material fact).

WHEREFORE, at Wilmington on this Sixteenth day of January in 2025, Plaintiffs HYPH (USA), Inc. and Xhail, Inc.'s Motion for Summary Judgment (D.I. 80) is **DENIED**.



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CHIEF JUDGE